

Irick v. Arizona Public Service Co., 95-ERA-2 (ALJ Nov. 30, 1994)

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DATE: November 30, 1994

CASE NO.: 95-ERA-02

In the Matter of

GARY L. IRICK
Complainant

v.

ARIZONA PUBLIC SERVICE COMPANY/
ARIZONA NUCLEAR POWER PROJECT,
Respondent

Before: JOEL R. WILLIAMS
Administrative Law Judge

**ORDER RECOMMENDING APPROVAL OF SETTLEMENT AND
DISMISSAL OF THE COMPLAINT WITH PREJUDICE**

This case arises under the employee protection provisions of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. §5851 (ERA). On October 12, 1994, the Assistant District Director, U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, notified the Complainant that a fact-finding investigation, based on the information he had furnished, did not support his allegation of discrimination. The Complainant timely requested a hearing and the same was scheduled for November 15, 1994 in Phoenix, Arizona.

The parties appeared on the scheduled hearing date and advised that during the previous evening they had reached a settlement on all issues in this matter. They were in the process of drafting a settlement agreement and requested a recess until later that day. I advised the parties' representatives of the Secretary of Labor's recent rulings regarding the Freedom of Information Act's impact on settlement agreements under the ERA and they expressed awareness of the same.

Upon resumption of the hearing counsel for the Respondent announced that the agreement had not been completed as they wanted my views regarding a confidentiality provision. I was advised at that time as to the basic terms of the agreement including the

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monetary consideration to be paid to the Complainant. He was present and expressed satisfaction with the terms. As I saw no

purpose for any further hearing, the proceeding was adjourned with the understanding that the written agreement would be forwarded to me expeditiously.

A duly executed settlement agreement has now been submitted. It is appended hereto and is incorporated herein by reference.

Both parties to this proceeding have received independent counsel. The exhibits and arguments presented by the parties in regard to the a previously denied motion for summary decision filed by the Respondent indicate that there exists true justiciable issues in this case which are neither frivolous or unsubstantial.

Although the parties have agreed to certain confidentiality regarding the agreement, they recognize the Department of Labor is not restricted by such confidentiality agreement. Furthermore, the provision in the agreement that it shall be interpreted and enforced under the laws of the State of Arizona is interpreted as meaning that its intent is not to limit the authority of the Secretary under any federal statute or regulation. See, *Brown v. Holmes & Narver, Inc.*, Case No. 90-ERA-26, Order of the Secretary Approving Settlement and Dismissing Complaint, May 11, 1994.

I find the agreement to be fair, adequate and reasonable, and I believe it is in the public interest to adopt the agreement as a basis for the administrative disposition of this case. Accordingly, I recommend that the settlement be approved and that the case be dismissed with prejudice.

JOEL R. WILLIAMS
Administrative Law Judge

NOTICE: This recommended Order and the Administrative file in this matter will be forwarded for review by the Secretary of Labor to the Office of Administrative Appeals, U.S. Department of Labor, Room S-4309, Francis Perkins Building, 200 Constitution Ave., N.W., Washington, D.C. 20210. The Office of Administrative Appeals has the responsibility to advise and assist the Secretary in the preparation and issuance of final decisions in employee protection cases adjudicated under the regulations at 29 C.F.R. Parts 24 and 1978. See 55 Fed. Reg. 13250 (1990).